IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

LAR NO. 27 OF 1991

WITH

LAR NO. 3 OF 1992

WITH

LAR NO. 4 OF 1992

LAR NO. 27 OF 1991

The Special Land Acquisition
Officer. (MHADA). .. Petitioner.

And

Scindia Workshop Ltd.,
and others .. Claimants.

And

Company Secretary,
Mazgaon Dock Ltd., .. Acquiring Body.

Mr. S.R. Simhan with S.K. Chari i/by Parikh
& Co. for Claimant No. 1.
Mr. C.M. Korde with Milind Jadhav for BPT.
Ms. Geeta Shastri for SLAO.

WITH

LAR NO. 3 OF 1992

The Special Land Acquisition
Officer. (MHADA). .. Petitioner.

And

Scindia Workshop Ltd.,
and others .. Claimants.

And

Company Secretary,
Mazgaon Dock Ltd., .. Acquiring Body.

Mr. S.R. Simhan with S.K. Chari i/by Parikh
& Co. for Claimant No. 1.
Mr. C.M. Korde with Milind Jadhav for BPT.
Ms. Geeta Shastri for SLAO.

WITH
LAR NO. 4 OF 1992
IN
LAQ 362

The Special Land Acquisition
Officer. (MHADA). .. Petitioner.

And

Scindia Workshop Ltd.,
and others .. Claimants.

And

Company Secretary,
Mazgaon Dock Ltd., .. Acquiring Body.

Mr. S.R. Simhan with S.K. Chari i/by Parikh
& Co. for Claimant No. 1.
Mr. C.M. Korde with Milind Jadhav for BPT.
Ms. Geeta Shastri for SLAO.

CORAM : S.U. KAMDAR, J.
DATE: 20TH OCTOBER, 2005.

ORAL JUDGMENT :

1. These three land acquisition references are in respect of acquisition of the same land and are thus disposed of by the common judgment.

2. Some of the material facts, briefly enumerated are as under :-

3. The subject matter of the land which is under acquisition in the present case is land bearing no. 3/2, 4/2, 427, 835 and 836 of Mouze Division at Kurla. The said land has been acquired for expansion of Mazgaon Dock Limited for defence purpose. A notification was issued under section 4 of the Land Acquisition Act bearing No. LAQ DESK-1/D.1/2627/CR-161 dated 17.5.1988 which was published in the Maharashtra Government Gazette on

26.5.1988 inter alia proposing the acquisition of land for public purpose of expansion of Mazgaon Docks. Section 6 notification was issued by notification bearing no. LAQ/DESK/1/B 1/CR/195 dated 24.5.1989 which was published in the Maharashtra Government Gazette on 25.5.1989.

4. A proposal was forwarded on 13.4.2000 by the Acquiring Body which is Mazgaon Docks Limited to the Additional Collector, Bombay Suburban District for acquisition of the said land. The area of 22073.73 sq mts. forming part of the aforesaid four C.T.S. Nos. was proposed to be acquired. In respect of the said land, the Bombay Port Trust is claiming to be the owner whereas the claimant no. 1 i.e. Scindia Works Limited is claiming to be the lessee of the substantial part of the land and owner in respect of four small portions of the land. The State Government had also initially staked claim as an owner in respect of the said property. The Land Acquisition Officer has given his award dated 29.5.1991. Thereafter an amended award came to be passed on 25.6.1991 bifurcating therein the awarded amount between claimant no. 1 namely Scindia Works Limited as a lessee and the claim of the Bombay Port Trust as the owners of the land. The Claimant No. 1, namely Scindia Works Limited has filed a reference under section 18 of the Land Acquisition Act for enhancement of the amount. The claimant no.

2 namely Board of Trustees of the Port of Bombay has also filed a reference under section 18 of the Land Acquisition Act for enhancement of the amount. The State Government has filed a reference under section 30 of the Land Acquisition Act inter alia contending that the apportionment of the compensation has been wrongly shown between the claimant no. 1 and 2 and the State Government has also raised claim in the said compensation as owner thereof. Thus, the State Government's rights are also required to be determined under section 30 of the Land Acquisition Act.

5. On behalf of claimant no. 1 two witnesses are examined. One Mr. Kirit Shyamlal Choksi and thereafter one Mr. Vinit R. Shah, the valuer in support of his claim. No witnesses are produced either by the Bombay Port Trust, State Government or the SLAO in support of their claims. The Bombay Port Trust relied upon the evidence of the same valuer for the purpose of enhancement of compensation under section 18 of the Land Acquisition Act.

6. The land which is the subject matter of acquisition had a workshop belonging to the claimant no. 1. The said workshop was situated on the open plot of land adjacent to Mazgaon Docks. The said work shop had three RCC structures, various steel

structures as well as plant and machineries which are situated thereon. The land is acquired along with the said RCC structures. It is the case of the acquiring body - Mazgaon Docks Limited as well as the State Government and SLAO that the plant and machinery were in fact not a subject matter of acquisition but the same were taken over at the instance of the claimant no. 1 and compensation was paid for the same. The claimant no. 1 has produced a compilation of documents being Exhibit C-1-A to C-1-F. Briefly speaking the said documents pertain to various correspondence between Mazgaon Dock and the State Government which has been exchanged prior to the acquisition. The second compilation C-1-G to C-1-M which is in the form of notification, reply of the claimant no. 1, claim lodged by the claimant no. 1 with the Land Acquisition Officer minutes and the hearing before the Collector, correspondence as well as the award and the amended award passed by the authorities.

7. In the Examination-in-Chief the deponent Kirit Chokshi has deposed that he has been Director of the Company and as such being aware of the facts deposing in the present proceedings. It has been his case that Scindia Works Limited is wholly owned subsidiary company of the company known as Scindia Steam Navigation Company Limited. He has deposed that the earlier the company was known as Bombay

Steam Navigation Co. (1939) Ltd. and the company was inter alia engaged in the activities of shipping and ship repairs. It was deposed that the company was in business for about 52 years before the said Company was proposed to be taken over by the Government. In so far as the land is concerned, in the deposition the claimant no. 1 states that the total holding of the claimant no. 1 was 22073.73 sq. meters = 26312.53 sq. yards. According to claimant no. 1, out of the aforesaid holding 2851.46 sq. meters = approximately 3399.20 sq. yards) was free hold and remaining area admeasuring 19222.27 sq. meters = approximately 22913.33 sq. yards was lease hold land held by the claimant no. 1. It is the case of the claimant No.1 that earlier Laughton's Survey Numbers in five City survey Numbers have been changed and details thereof are set out at page no. 169 of the compilation. It has been also the case of the claimant no. 1 that the lease was of long durations i.e. from 50 years to 99 years and all the leases were subsisting on the date of acquisition of the said land with further option of renewal for a long duration and thus the land was in the nature of a long lease hold tenures which is as good as freehold. According to the claimants, there were 19 sheds in respect of the said land and there were no permanent structures in respect of the said land. There were facilities such as under-ground fire fighting water storage

tank, under-ground water storage tank, well-laid-out internal roads, well built compound wall. According to claimant no. 1 at the relevant time the company was working with full force and all the 700 employees work-force was in employment. According to claimant no. 1, the company was also catering to the business of other national and international shipping companies apart from carrying on the repair in their workshop for Shipping Corporation of India and the defence. According to the claimant no. 1 there was a proposal that the claimant no. 1 may be acquired as a going concern by the Mazgaon Dock Limited and detailed negotiations were also carried on for the same. It is his case that even a valuation was also arrived at for the purpose of taking over of the company by the Mazgaon Dock Ltd., It is the claimant no.1's case that in breach of the aforesaid understanding arrived at by and between the parties the government resorted to power of acquisition solely with a view that the full price should not be paid to the claimant no. 1 for its assets. He has also produced certain correspondence in support of his case. According to the claimant no. 1 though the valuation report was prepared, the Mazgaon Dock Limited did not forward any valuation report. The said valuation report was prepared by one Messrs J.B. Boda Offshore Surveyors and Adjusters Ltd. However, he has deposed that in breach of the aforesaid understanding, a

notification was issued by the Land Acquisition Officer on 5.7.1988 and land was proposed to be acquired for the aforesaid defence purpose of expanding Mazgaon Docks and ultimately an award has been passed. According to claimant no. 1, he has filed the valuation report prepared by Messrs. G.P. Engineering Services, Government approved valuer before the Land Acquisition Officer. However, he has ignored the same and awarded very ridiculously small amount of compensation and, therefore, he has filed a claim reference under section 18 of the said Act. He has also claimed solatium at the rate of 15% and interest at the rate of 12%. It is also the case of the claimant no. 1 that he is the holder of all the documents of title in respect of the said property and tenure of lease and, thus, he is entitled to a larger portion of the compensation to his share in respect of the lease hold land and entire compensation in respect of the free hold land. Thus, according to the claimant no. 1 he is entitled to higher amount of market value and also entire claim of compensation in respect of free hold land held by him. In his cross-examination the said deponent has produced a letter dated 28.10.1987. There is an objection raised by the learned Advocate appearing for the State Government. The said document Exhibit C-1-A, C-1-B, C-1-C, C-1-D are marked as exhibits however subject to the objection of Shri Rajguru that C-1-A is not proved. A

valuation report has been also marked subject to the proof of evidence. Two crucial letters, namely, letter dated 28.1.1991 and 31.1.1991 were produced along with annexure marked Exh. C-1-I, and C-1-J. However, when the said letters were tendered by Mr. Simhan in the course of his examination-in-chief, an objection has been raised by the Acquiring Body that the documents which are produced along with the letters are not proved. The said letters along with annexures pertain to the record of Income Tax Authorities wherein the authorities have given sanction in respect of two sale transactions in the same area under Section 269 UC of the Income Tax Act. The learned Judge while ruling on the objection has held that the said documents are taken on record tentatively and not as proved documents. The said ruling was given by relying upon a judgment of the Apex Court in the case of Bipin Shantilal Panchal vs. State of Gujarat reported in AIR 2001 S.C. 1158. However, it is clarified by the learned Judge while giving the said ruling as under :-

> "It is clarified that the counsel shall be entitled to cross-examine the witness on these documents without prejudice to their contentions that the documents have not been proved."

The aforesaid letters have been relied upon by the

claimants to establish higher market value of the said land under acquisition. The witness of the claimant no. 1, Mr. Choksi was thereafter cross-examined by the various parties. The witness has in his cross-examination by the Acquiring Body deposed that the acquired land is not situated in dock area of the Bombay Port Trust. It has also been deposed that the said land is not by wall separated by the Bombay Port Trust. Claimant No. 1 has admitted in his cross-examination that the company was not the profit making company in the year 1988-89 and the company was interested in disposing of its assets as a going concern and the directors and the shareholders of the company were interested in selling their shares. It has also been deposed by the Claimant No. 1 that Mr. V.N. Parekh was appointed as a receiver by the Government of India in respect of the properties of Scindia Steam Navigation Ltd., under the Shipping Development Fund Committee (Abolition) Act, 1986. A detailed cross-examination has been conducted in respect of the negotiations which has been relied upon by the claimant no. 1. He has deposed that the property was free of encumbrances and mortgages. He has deposed that the equitable mortgage which has been mentioned in Exhibit C-H was never created in respect of the said property for which amount was borrowed by the claimant no. 1 from the Bank of Baroda and there was only an agreement to create an

equitable mortgage. However, the deponent has thereafter corrected himself by admitting that English mortgage is not created but an equitable mortgage was created in respect of the said property. It is also admitted that the equitable mortgage has not been redeemed as on the date of the acquisition of the said land. Thus, the land was encumbered.

8. It is also admitted that the shares of the company were listed. The issued subscribed and paid up capital of the Claimant No. 1 was Rs. 24,00,000/- comprising of 24,000 equity shares of Rs. 100/- each. It has been deposed that the claimant did not wish to sell only the property of the company but they were interested to sell the entire company as a going concerned to raise higher amount for the said properties. He has however deposed that he is not aware of the fact that permission was required to be taken from the lessor of the lands for disposing of the said land. He has denied that there was any restriction regarding user of the said land or access to the acquired lands and, therefore, valuation of the said property has to be the lesser amount than the actual market price of the said land in the open market. However, he has deposed in his cross-examination that the entire portion of land admeasuring 906.77 square yards was a free hold land and the same is forming part of the

acquired land. He has thereafter explained in detail that the portion of the land is a free hold land because it was forming the part of the quit and ground rent tenure. He has been thereafter further cross-examined about the different survey numbers and whether the said land forms part of the lease hold land or part of the free hold land. The learned counsel appearing for the Board has tried to suggest that in fact the entire land which is acquired is the lease hold land and not the free hold land. However, in the cross-examination, the witness categorically deposed as under :-

> "I do not agree that none of the acquired plots form part of free hold land and that it is only the leasehold land which is acquired."

In so far as structures are concerned, in the cross-examination he has admitted that out of the 22 structures on the acquired land only three were RCC structures and others were not. The claimant no. 1 has also admitted that there was a loan advanced by the Bank of Baroda of a sum of Rs. 1,22,46,404.23. In the cross-examination which was conducted by Mr. Rajguru on behalf of the SLAO he has also admitted that out of 22, 19 structures were of steel glader. In so far as correction of survey numbers is concerned, the witness has deposed in his

cross-examination that he is not in a position to state when the present survey numbers were given in respect of free hold land. He has further deposed that the claimant no. 1 did not redeem the land from the quit and ground rent tenure to free hold land tenure. However, he submitted that purchase of the land by the claimant no. 1 was on the basis of the quit and ground rent tenure which means that the land is not lease hold but the free hold land. This is in gist the evidence of the claimant no. 1.

9. The valuer, Mr. Vinit R. Shah was thereafter examined. He is the valuer who has prepared the valuation report which was filed before the SLAO in respect of the land, building, plant and machinery. In his evidence-in-chief he has deposed that he is the government approved valuer and he is specialised in valuation of both movable and immovable properties. He has further deposed that he has evaluated all the assets of the acquired land and the property is evaluated on the basis of fair market value and comparable instances of sale are taken as guidelines. According to him, the value of the land was Rs.32,28,00,000/-. The said valuation was done according to the valuer on 26.5.1988 being the date of notification under section 4 of the Land Acquisition Act, 1894. The land is evaluated on the basis of sq. mtrs. and the lease hold interest is evaluated on the basis of the deed of lease

submitted by the claimant no. 1 and taking into consideration that the lease is for a long duration of 99 years with the renewal clause. He has also deposed that he has not provided for solatium and interest as provided under the Land Acquisition Act in his valuation report. This was because, according to him, it can be ascertained only after the SLAO given his finding on the valuation report. He has further deposed that after proper consideration, the value of land according to him can be fixed at Rs. 1,59,42,000/- and he has also further considered the status of miscellaneous items and valued the same at Rs. 12,50,000/-. He has further deposed that the award passed by the SLAO is not correct. He has deposed that the SLAO has not taken into consideration the difference between the free hold land and the lease hold land and this is a serious error. He has also deposed that the SLAO has totally ignored the valuation report and has given valuation on the basis of his own ipse dixit. According to him, the instances compared by the SLAO are not at all comparable instances and the rate of Rs. 270/- per sq. meter is absolutely baseless. He has further deposed that the SLAO has not considered expert opinion and has arrived at totally unrelated figures on the facts and principles which are irrelevant. He has also deposed that the valuation of the building is also erroneous and incorrect. He has deposed that the rejection of the

19 valuable structures from computation of compensation is without any merit and baseless. He has ultimately deposed that the valuation of the buildings as well as the land is based on a totally erroneous principles. Even a depreciation value shown in respect of the buildings is also baseless and contrary to the well settled principles of valuation. He has deposed that he has considered the value of two RCC structures on the basis of the market value of the construction costs as on the date of the acquisition. In so far as the plant and machinery is also concerned, he has deposed that the reason given by the SLAO is totally erroneous. The said valuer has thereafter been cross-examined firstly by the Acquiring Body. In his cross-examination he has admitted that the acquired land is located towards the seaward side of Dockyard Road and there is no comparable land available on seaward side of the said road. He has also admitted that at the relevant time the land was designated for industrial development in the development plan. He has also admitted in his cross-examination that the land which is acquired was bounded by Mazgaon Dock on both the sides of the land. However, he denied the knowledge that any portion of the land was designated as a prohibited area. He admitted that if the land is in the prohibited area then the valuation could be severely affected. He has further admitted that he has not taken into

consideration that there is an existing jetty on the acquired land for the purpose of valuation. He has deposed that he has taken into consideration the valuation of the land on the principle of general industrial user of the said land in industrial zone. He says that as far as valuation is concerned, I have not distinguished between ship repair and general industrial user because it is the purchaser to decide what is the land he wants to use for. He has also admitted that he has submitted his valuation report to M/s. G.P. Engineering Services Limited who has in turn submitted the report to the Scindia Workshop Ltd., and to this Court in the present proceedings. He has admitted in his evidence that the SLAO directed the claimant no. 1 to remove all steel structures and sheds erected on the land including three RCC structures but inspite of the same he has taken the valuation of the said sheds into account while preparing the valuation report. He has also admitted that if the steel structures are not taken into consideration, then to that extent the valuation report will be required to be changed. He has also admitted that the steel sheds which were lying on the said land were removable and were not of the nature of permanent structures. Thereafter the witness was also cross-examined by the claimant no. 2. He has deposed in his evidence in cross-examination of the claimant no. 2 that he has taken the value of the

plot of land as 90% of the free hold land i.e. he has taken into account share of compensation as 90% of the total compensation for lessee and balance 10% for lessor/owner. He has deposed that he has done the said assessment after going through the documents of lease deeds. He has stated that he has taken into consideration the aforesaid ratio on the basis of the material supplied by the claimant no. 1 to him. He has also admitted that the figure of 90% and 10% of apportionment of amount of compensation between the lessee and lessor is decided on the basis of his subjective satisfaction. He has also deposed in his evidence that it is not possible for him to identify the land which is lease hold and the land which is free hold.

10. Thereafter Mr. Sayyed for G.P. Engineering Service also filed an affidavit of evidence. In his evidence he has admitted that he is the proprietor of G.P. Engineering Services and he entrusted the work of valuation to Mr. V.R. Shah. Mr. Sen has cross-examined the witness of claimant no. 2 i.e. valuer Mr. V.R. Shah. In his cross-examination of the acquiring body he has admitted that he has calculated the said claim on the basis of buildable area and its market value. He has further admitted that he has taken into account the rate of 844.40 per sq. ft. as a rate only in respect of the land an not in respect of the buildable area. The said

rate he has calculated on the basis of the buildable area available in respect of the said land and has arrived at the said market value of the land. He has admitted that he has not given discount for the aforesaid factors while evaluating the land.

11. The aforesaid evidence is the oral evidence of the claimant no. 1 in the present case and no other party has led any oral evidence.

12. After conclusion of the aforesaid oral evidence it was brought to my notice that some of the pages of Exhibit C-1-H i.e. the valuation repot have been missing from the document tendered in this Court. In the aforesaid position, an enquiry was made with the SLAO who after verification has stated that in fact the said valuation report which has been filed in court has omitted certain pages being page nos. 17 to 53. He has also confirmed that these pages formed part of the original valuation report which was filed by the claimant no. 1 with the SLAO. With the consent of the parties, I took those pages being running page nos. 17 to 53 to valuation report on record and recalled the said valuer for the purpose of further cross-examination. The valuer has been thereafter further cross-examined by the Acquiring Body. In the said cross-examination, the valuer Mr. Vinit R. Shah has deposed that he has taken into consideration the

book value of the plant and machinery and thereafter arrived at the replacement value on the basis of details which he is unable to produce. According to him, the valuation of the plant and machinery as given by him is the fair market value of the property.

13. On the aforesaid oral and documentary evidence, the matter has been argued before me by the learned counsel for the various parties.

14. The learned counsel for the claimant no. 1 has urged before me the following contentions.

(a). He has contended firstly that the case of the claimant no. 1 should be accepted as totally admitted by all the parties because of provisions of Order 8 Rule 5 as the respondents have failed to file a written statement to the statement of claim filed by the claimant no. 1 and, therefore, it should be deemed that the claim made by the claimant no. 1 is an admitted claim in view of order 8 rule 5 of the Civil Procedure Code and the Court must grant the claim of the claimant no. 1 as it is. It has been thereafter contended that the entire compensation must be paid to the claimant no. 1 because neither the Bombay Port Trust nor the Government is entitled to any amount because the government being owner of the land cannot pay

compensation to itself. It has been further contended that the belated statement of claim filed by the Government of Maharashtra should be rejected because the Government cannot claim any compensation for the land acquired by themselves.

(b) It has been thereafter contended that in the negotiations which preceded to the said award it was clearly established that Mazgaon Docks Limited was interested in taking over of the said company on the basis of going business of the claimant no. 1. After assuring that the said company will be acquired as a going concern for a particular amount of money, they have falsely taken resort to the land acquisition proceedings and, therefore, the compensation as agreed by them in the aforesaid negotiations by the Mazgaon Docks Limited should be directed to be paid by the Acquiring Body to the Claimant No. 1.

(c) The next contention advanced is that the hearing before the SLAO was nonest as the SLAO was predetermined to pass the award at the behest of Mazgaon Docks Limited and the SLAO has therefore, awarded a ridiculous amount which comes to 1.80% of the claim made by the claimant no. 1. It has been further contended that the SLAO did not take into account the comparable sale instances as submitted by the claimant no. 1 but relied on selectively

only on isolated instances which are not comparable. He has further contended that the valuation report has not been assailed by any of the parties even in the present cross-examination and, therefore, the said valuation report of the valuer must be accepted in its entirety.

(d) It has been thereafter contended that the 22 structures on the said land were of permanent nature and were not temporary structures. Three structures were for administrative offices whereas the balance 19 structures were for factory operations. The claim awarded by the SLAO is Rs.3,99,000/- for three buildings only and he has ignored the balance 19 structures. This amounts to 2.50 % of Rs. 1,59,42,000/- the claim made by the claimant no. 1 before the SLAO.

(e) It has been thereafter contended that the SLAO has not given proper hearing and was bent upon in passing the award within the statutory period of two years from the date of the publication of section 6 notification.

(f) It has been further contended that out of the total area of 22,073.73, 19,259.80 sq. meters was lease hold land and 2,843.05 sq. meters was free hold land. It has been contended that the SLAO has not even looked into the various clauses of

lease deed particularly the existence of the renewal clause.

(g) It has ben thereafter contended that in view of the fact that the claimant no. 1 had led evidence the case of all other parties should be rejected and the case of the claimant no. 1 should be accepted.

(h) In support of his case that portion of the land is a free hold land, the learned counsel for claimant no. 1 has relied upon various documents being receipt no. 207 ad 209 of the compilation, a letter dated 13.4.1988 Exhibit C-2-2 giving details of the working out of lease hold land and free hold land and it has been submitted that it has been an admitted position that free hold land on the basis of quit and ground rent tenure one time rent has been paid by the claimant no. 1 and the receipts and the records has been produced in support thereof. In so far as the lease hold land is concerned, it has been contended by the learned counsel for the claimant no. 1 that they are entitled to 90% of the share of the value of the property because they are as good as owner as the tenure of lease hold land was 99 years and was further renewable for a period of 99 years. It has been contended that longer is the period of lease, higher the portion of the compensation the lessee is

entitled to. It has been contended that the lease was valid and subsisting and therefore the claimant no. 1 is entitled to the amount of 90% of the compensation which has to be ultimately awarded by this Court by taking into consideration the appropriate valuation of the said land.

(i) In so far as the valuation of the land is concerned, the learned counsel has placed reliance on sale instances which are at Exhibit C-2. He has contended that the said sale instances should be accepted. He has further contended that the valuer has relied upon the said sale instances and thus, the said sale instances should be accepted as correct. He has further contended that once the valuer has relied upon the said sale instances in his report, it is not necessary for him to prove the said sale instances by producing documents of sale of the said property. In any event, he has submitted that he has produced the letter dated 28.3.1991 being the document from the custody of the Income-tax Authorities which indicates the details of the said two sale instances and by taking into consideration the said sale instances the valuer has prepared the said valuation report and thus SLAO's valuation must be rejected. It has ben contended by the learned counsel for the claimant no. 1 that the valuation of the land as computed by the SLAO is a ridiculous and unrealistic figure and, therefore, a

higher valuation of the said acquired land should be granted. It has been also contended by the learned counsel for the claimant no. 1 that irrespective of all the other sale instances produced by the SLAO and/or the Acquiring Body, the sale instances produced by the claimant no.1 even if they are not proved, should be accepted as the correct sale instances and the valuation report should be accepted in toto. The claimant no. 1 has further in his written submissions has submitted that in any event the minutes of the Board meeting dated 26.3.88 between the Acquiring Body and the Claimant No. 1 indicates the approximate valuation of the said land and the said value has been fixed at Rs. 3.16 crores. The claim made by the claimant no. 1 is much less and, therefore, the same should be accepted. It has been contended by the learned counsel for the claimant no. 1 that even if the Court is of the view that all the sale instances must be rejected because they are not proved, still on the basis of the valuation report, the claim of the claimant no. 1 should be admitted. Various authorities have been cited in support of the aforesaid contentions which I shall deal with while dealing with the aforesaid submissions of the claimant no. 1.

15. The claimant no. 2 has also made the following submissions and has filed its written

submissions in support thereof.

(i) It has been contended by the claimant no. 2 that under the scheme of land acquisition there is no question of filing of any written statement in reply to the statement of claim filed by the claimant no. 1.

(ii) It has been thereafter contended that even if the claim is not made before the Collector by the claimant no. 2, the Collector is bound and liable to consider the claim of the Port Trust as an owner under section 11 of the Land Acquisition Act and, therefore, the contention that the claimant no. 2 cannot get any amount in the present proceedings because they did not appear before the SLAO should not be accepted.

(iii) It has been thereafter contended that the claim by the Bombay Port Trust for compensation in respect of the acquired land first time before the Court is maintainable.

(iv) In so far as the valuation of the properties is concerned, the claimant no. 2 has wholeheartedly supported the claimant no. 1 and has contended that the valuation must be enhanced. In so far as the apportionment is concerned, the Bombay Port Trust has claimed that the share of the lessor should not

be less than 80% as they are the owners in respect of the said land and the lessees are merely in possession. My attention has been drawn to the large number of authorities where the Apex Court has divided the share between the lessor and lessee depending on facts of each case. I shall deal with the said authorities while dealing with the aforesaid contention.

(v) In so far as the free hold land is concerned, the learned counsel for the Claimant No. 2 has contended that the claim of the claimant no. 1 that a portion of the land is free hold land and they are entitled to the compensation in its entirety must be rejected because the burden to prove that the said land is free hold is on the the Claimant No. 1 and they have failed to discharge the same.

16. The Acquiring Body has also filed their written submissions and it has been submitted as under :-

(1) It has been submitted that in so far as the Acquiring Body is concerned, they are not required to file any written statement or pleadings but they can merely support the award because the reference under the Land Acquisition Act is not inter se lis between the parties but it is an assessment by the

Court of a fare and actual market value of the land which ultimately is required to be awarded. It has been also contended that the allegations made against the Acquiring Body about the pre-acquisition negotiation stage as well as against the SLAO in the course of the acquisition must be ignored because that is not the jurisdiction or scope of enquiry permissible under section 18 or 30 of the Land Acquisition Act by this Court. It has been further submitted that the claimant no. 1 has failed to establish that they are entitled to enhancement of the valuation. It has been contended that certain facts must be taken into consideration before arriving at the enhancement of the valuation. Firstly, the said land is situated at Dockyard and was bounded on both the sides by the Acquiring Body i.e. Mazgaon Docks Limited. This land had a limited facility and cannot be used for an industrial purpose on the basis of which the valuation report has been prepared by the claimant no. 1.

(2) It has been contended that there were only three RCC structures and the balance of the 19 structures which were of non-permanent nature and, therefore, the claimant no. 1 is not entitled to claim any compensation in respect of the said non-permanent structures. It has been contended that the sale instances are not produced by

tendering in evidence nor index II has been produced in respect of any sale instances. A letter from the Income-tax authority on which reliance is placed and which includes sanction of sale by the Income Tax Authorities under Section 269 UC is also not proved and the learned Single Judge has in the course of cross-examination given necessary ruling that it will not be admitted in evidence unless it is proved. It has been also contended that the valuation on the basis of the rate of construction of RCC structure is also baseless. It has been contended that there is no material or details on the basis of which valuation report has been prepared for the purpose of valuation of the plant and machinery.

17. The learned counsel appearing for the State Government and the Bombay Port Trust has informed the Court that the issue relating to the ownership of the property between the Bombay Port Trust and the State Government has been resolved and I must not take into consideration their inter se claims. I am informed that I may proceed on the basis that the Bombay Port Trust is entitled to the said amount and then in turn the said amount will be distributed between the Bombay Port Trust and the State Government In view thereof, I am not going into much details about the claim of the State Government.

18. Before I deal with question of valuation as well as apportionment of the compensation amount, it is necessary that preliminary issues raised by the learned counsel for the claimant no. 1 should be answered.

19. The first question which has been raised pertains to the non-filing of the written statement by the claimant no. 2 SLAO and the State Government to the statement of claim filed by the claimant no. 1. It has been contended that by virtue of non filing of the written statement under order 8 rule 5 and 13 of the CPC the said statement of claim made by the claimant no. 1 should be treated as admitted claim and the same should be awarded by this Court. In my view, the argument of the learned counsel for the claimant no. 1 is totally contrary to the scheme of the Land Acquisition Act. The scheme of the Land Acquisition Act under section 18 and 30 which provides for jurisdiction of this Court for the purpose of enhancement of compensation and/or apportionment thereof is the limited power conferred on this Court. In so far as application of the Civil Procedure Code to the said land acquisition proceedings is concerned, the same is governed by section 53 of the Land Acquisition Act. Section 53 inter alia contemplates that the CPC is applicable to all proceedings before the Court in so far as they are not inconsistent with what is contained

under the provisions of the said Land Acquisition Act. The provisions of sections 18 and 30 of the Land Acquisition Act are in my view two different schemes by itself and the question of applying CPC to the said proceedings does not arise. Under the scheme of the Land Acquisition Act after an award is made by the Collector, which is termed as an offer by the State Government for the land under acquisition the claimant is given an opportunity to give his counter offer by way of seeking enhancement of compensation and this counter offer is forwarded to the Court for the purpose of determination of the valuation of the said land. Once a counter offer is made for seeking enhancement of the compensation then the claimant is not accepting the offer of the State Government as contained in the award. Thereafter the State Government is required to make an application to this Court by way of reference for the purpose of determination of the actual market value of the said land and for a declaration of market value of the said land which shall be binding on both the parties i.e. the claimant and the State Government. This jurisdiction of the Court as held by the Apex Court is jurisdiction in the nature of reassessment of the market value of land by the Court itself. Under the proceedings under section 18 or 30 what is required by the court is to decide the compensation or apportionment thereof where the written statement is not filed by any of the parties

to the said proceedings. In fact rules framed under the High Court (Original Side) Rules in rule 641, 645 deals with the procedures to be followed in the land acquisition matters. Under rule 652 upon a reference being filed, the Prothonotary and Senior Master is required to issue notice in form no. 82 in cases where reference is under section 18 of the Act and in form no. 83 in cases where reference is under section 30 of the Act. The format inter alia specify the date on which the evidence has to be produced on which the claimant is seeking to rely upon. Thus, form framed under rule 652 is in contradiction with the writ of summons which in form no. 9 which requires the claimant to file written statement. Apart therefrom in my view the provisions of sections 18 to 22 provides for a complete code by itself and which is in terms inconsistent with the question of filing of the written statement as contemplated under the Civil Procedure Code. Thus, by virtue of section 53 by which the provisions of the CPC are made applicable provides for a limited application i.e. in so far as not inconsistent with the provisions of the said Land Acquisition Act. Since the scheme of determination of reference under Section 18 to Section 22 of the L.A. Act being inconsistent to the provision of Civil Procedure Code providing for filing of written statement the provisions of Order 8 of Civil Procedure Code will not be applicable to

the determination of the Land Acquisition Reference under Section 18 or Section 30 of the Land Acquisition Act. I am, therefore, unable to accept the contention of the learned counsel for the claimant no. 1 that in the absence of the written statement, the statement of claim of the claimant no. 1 has to be accepted as admitted and I must pass necessary order and/or decree under order 8 rule 5 read with rule 13 of the CPC.

20. The next contention advanced by the learned counsel for the claimant no. 1 that the claim of the claimant no. 2 must be rejected and the entire compensation should be paid to the claimant no. 1 because the Bombay Port Trust did not file any claim before the SLAO and, therefore, they are not entitled to file the claim before this Court. The aforesaid contention is based on the argument that by not filing of the claim before the SLAO, the claimant no. 2 has given up his claim as an owner in respect of the said property and thus, the exercise of apportionment should not be carried out by this Court by and between the claimant no. 1 and the claimant no. 2. The aforesaid contention is also without any merits and is required to be rejected. The provisions of section 11 (1), (2) and (3) of the Land Acquisition Act reads as under :-

"11. Enquiry and award by Collector.-- (1)

On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land and [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of --

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claim, he has information, whether or not they have respectively appeared before him;

[Provided that no award shall be made by the Collector under this sub-section without the

previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf;

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class or cases as the appropriate Government may specify in this behalf.]

[(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement;

(3) The determination of compensation for any land under sub-secton (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance

with the other provisions of this Act."

The provisions are very clear that whether a claim is filed before the SLAO or not, the SLAO is required to consider the claim of all parties who have interest in the said property and decide the said claim accordingly. Thus, in my opinion, it is totally irrelevant whether a claim was preferred by the claimant no. 2 before the SLAO or not. Once the Section 30 reference is made by the Collector to the Court and to which the Bombay Port Trust is a party, then, in that event, the Court is required to determine the claim of all the parties who have different interests in the said property.

21. The third issue I am required to consider by and between the parties is pertaining to the area of the land which is lease hold and the area of the land which is free hold. The learned counsel for the claimant no. 1 has contended that there are four small pieces of land on the said acquired properties on which the claimant no. 1 was the absolute owner and the State Government as well as the Bombay Port Trust did not have any right, title or interest in respect of the said land. Exhibit C-2-2 gives details of the lease hold land and free hold land. Page 6 of Exhibit C-2-2 says that portion of the land was held under quit and ground rent tenure. The Claimant No. 1 has also relied

upon the conveyance in respect of the portion of the land being CTS No. 3/2. He has also relied upon the details of quit and ground rent tenure. It has been contended by him that by virtue of the aforesaid documents and the conveyance it is clear that the four portions of the land which are marked on the map are the land which he is entitled to as an owner thereof. He has also contended that the terminology 'quit and ground rent tenure' indicates that the land was in fact available to the claimant no. 1 as an owner thereof once a one time tenure of rent is being paid. He has also relied upon receipt nos. 207 and 208 indicating that he has paid one time ground rent as quit and ground rent tenure. He has also relied upon his oral evidence and he has contended that there is no substantial cross-examination in respect of the same and thus it is clear that the land which has been acquired by him in the four portion is not a lease hold land but free hold land and thus he is entitled to entire compensation and the Government as well as the Bombay Port Trust are not entitled to any amount whatsoever in respect of the said land. According to the claimant no. 1. the area of 2,851 sq. mtrs. out of the total area of 22,073.73 square meters was the free hold land. According to the claimant no. 1, 19,222.27 sq. meters of land is the land which is lease hold land.

22. On the other hand, the learned counsel appearing for the claimant no. 2 as well as the State Government have contended that the claimant no. 1 has failed to discharge the burden to show that the land covered under the said four portions of land is the free hold land. He has further contended that the claimant no. 1 claims that the said land is the free hold land therefore, the burden of proof is on the claimant no. 1 to prove that the said land is free hold land and not lease hold land.

23. After considering the arguments of both the sides, I am of the opinion that on the evidence it has been established that large number of portion of the land which is a lease hold land. However, in respect of the leases which are produced before me are of an area less than 19222.27 sq. meters. The total land acquired is 22,073.73 sq. meters. From the documents which are produced, particularly in the nature of conveyance it is clear that the portion of the land was conveyed as a free hold land to the erstwhile company known as Bombay Steam Navigation Co. Ltd., Claimant No. 1 is the successor in title of the said company and has thus acquired the same interest being free hold land of an area of 2851 sq. mts. It is also further clear that necessary payment of rent under the quit and ground rent tenure has ben paid by the claimant no.

1 and, therefore, I hold that the claimant no. 1 has proved that 2851.46 sq. meters is the land held by him as free hold land and the claimant no. 1 is owner thereof. In my opinion, claimant no.1 is entitled to the total compensation in respect of an area of land of 2,851 sq. mts. out of total area of 22,073.73 sq. mts. and the claimant no. 2 or the State Government is not entitled to any apportionment in respect thereof.

24. The next contention which has been advanced by the learned counsel for the claimant no. 1 and 2 is in respect of what should be the apportionment in the case of balance lease hold land admeasuring about 19,222.27 sq. mts. Both the parties have taken the extreme positions. The claimant no. 1 is contending that 90% of the total compensation must be given to him as a lessee and the claimant no. 2 and the State Government together are entitled to only 10%. On the other hand the learned counsel for the claimant no. 2 has contended that by no stretch of imagination the compensation to the claimant no. 1 as a lessee should exceed 20% and 80% should be disbursed to the lessor i.e. the Bombay Port Trust and the State Government. I am not required to go into the apportionment of the amount between the State Government and the claimant no. 2 because of the settlement arrived at between them as recorded hereinabove. I am now required to consider what

should be the apportionment of the ratio of disbursement of compensation between the lessee claimant no. 1 and lessor i.e. claimant no. 2. Certain facts which are admitted facts are necessary and required to be set out herein for the consideration. The first fact is that the leas was for 99 years. Secondly, a substantial part of the lease was still subsisting i.e. about 33 years. Thirdly, the lease contained a renewal clause. Fourthly, the said renewal was for a further period of 99 years. Except the one lease out of the total six leases which are brought on record, all have a renewal clause for two times. The one lease i.e. dated 21.7.94 makes a provision for only one renewal. Now taking the aforesaid facts into consideration, I am required to determine the apportionment of compensation payable to the lessor and the lessee. The learned counsel for the claimant no. 1 has inter alia contended that by virtue of providing a long tenure of lease which are as good as the permanent tenure and permanently letting out of the land, the lessee is entitled to substantial part of compensation. It has been contended that originally the SLAO did not bifurcate the claim between the lessor and lessee which indicates that the claimant no. 1 was entitled to the entire claim. It has been further contended that subsequent amendment to the award is meaningless and should be ignored by this Court and

the claimant no. 1 should be awarded entire compensation for the said land. It has been further contended that there were 22 permanent constructions for heavy industrial use and all were assessed to tax by the Bombay Municipal Corporation. Thus, indicating that the land was as good as permanently allotted to the claimant no. 1. It has been further contended that the Bombay Port Trust the claimant no. 2 was never a lessor of claimant no. 1. It has been contended that in so far as Government of Maharashtra are concerned, they were lessor in respect of certain immovable properties and since the Government of Maharashtra cannot claim compensation for its own land, they are not entitled to anything and the claimant no. 1 is entitled to the entire amount. It has been further contended that in any event the share of the claimant no. 2 and the Government even if taken into consideration cannot exceed 10%. It has been further contended that since the Bombay Port Trust has not led any evidence for proving claim, they are not entitled to any compensation. On the other hand, the learned counsel for the Bombay Port Trust has contended that it is an admitted position that the B.P.T. is the lessor of land of about 19,222.27 sq. meters. It has been further contended that on the basis of the judgment of the Apex Court, it is necessary that the amount has to be disbursed between the lessor and the lessee. In support thereof, the learned counsel

for the Bombay Port Trust has relied upon the following authorities.

1. Union of India v. S. Ajit Singh and another, reported in AIR 1987 Delhi 151.

2. Bai Saraswati Jeshankar and another, vs. Agent, Bharatkhand Textile Manufacturing Co. Ltd., Ahmedabad & Ors., reported in AIR 1967 Guj 36.

3. Sharadchandra Chimanlal & Ors. vs. State of Gujarat and others, reported in AIR 1987 Guj 55.

4. Inder Prasad vs. Union of India and others, reported in 1994 (5) SCC 239.

5. Kiran Tandon vs. Allahabad Development Authority & Anr. reported in 2004 (10) SCC 745.

6. Brij Behari Sahai (Dead) Through LRs. vs. State of U.P. reported in 2004 (1) SCC 641.

7. Hitkarini Sabha, Jabalpur, vs. The Corporation of the City of Jabalpur & Ors. reported in 1972 (2) SCC 325.

8. Dossibai Nanabhoy Jeejeebhoy vs. P.M. Bharucha reported in 60 BLR 1208.

9. Ratan Kumar Tandon and others vs. State of Uttar Pradesh reported in AIR 1996 SC 2710.

10. Khazan Singh (dead) by L.Rs. vs. Union of India, reported in AIR 2002 SC 726.

11. Union of India and others vs. A. Ajit Singh reported in 1997 (6) SCC 50.

After surveying the aforesaid authorities which are multiple in number, I am of the opinion that essentially it is the Court which has to decide the apportionment of the compensation taking into consideration the factors, i.e. what is the balance tenure of the lease and what is the position of the renewal clause in the lease as well as enhancement of the lease rent. In the present case, the lease is of a permanent nature. The lease tenure is still substantially outstanding i.e. around 33 years. In the present case except in one case the lease can be renewed twice for 99 years. Thus, the leases have a very long duration, of an almost permanent nature.

However, the lessor still has a right of reversion and the compensation for the said right has to be determined. Looking to the aforesaid authorities which are cited before me, I am of the opinion that the compensation has to be shared at the ratio of 70% of the compensation amount for the lessee i.e. claimant no. 1 and 30% of the compensation amount for lessor i.e. claimant no. 2 B.P.T. and/or the State Government. Thus, I direct that the compensation be disbursed and apportioned under section 30 of the Land Acquisition Act by and between the claimant no. 1 and the claimant no. 2 on the other hand in the ratio of 70% and 30%.

25. This now takes me to the question of enhancement of compensation. The learned counsel for the claimant no. 1 and claimant no. 2 are supporting each other and submits that in so far as the enhancement of the compensation is concerned this Court should reject the award by the SLAO and determine fresh market value of the land. The learned counsel for the claimant no. 1 has contended that the Court is required to ascertain the market value of the land on the basis of the available material and documents on record. He has relied upon the following judgments to explain the principles which are laid down for determination of the market value.

1) Union of India vs. S. Ajit Singh and Anr. reported in AIR 1977 Delhi 151.

2) Tek Chand (Dead) by LRs and others. vs. Union of India and others, reported in (1990) 4 SCC 495.

3) Gulzara Singh and others vs. State of Punjab and others reported in (1993) 4 SCC 245.

4) Krishna Yachendra Bahadurvaru vs. The Special Land Acquisition Officer, City Improvement Trust Board, Banglore and others, reported in AIR 1979 SC 869.

5) Ravinder Narain and another v. Union of India, reported in AIR 2003 SC 1987.

By relying upon the aforesaid judgments, he has contended that the market value has to be determined on the basis of comparable land and the ability of the owner to develop the said land and its potentiality. The learned counsel for the claimant no. 2 has contended that the market value at the rate of Rs. 27 per sq. ft. is a ridiculous rate which has been offered by the SLAO and, therefore, it should be outrightly rejected and the Court should determine a proper market value. On the

other hand, the learned counsel appearing for the Acquiring Body, Mazgaon Docks has contended that the claimant no. 1 as well as the claimant no. 2 have failed to establish that the market value of the land which has been offered by the SLAO is ridiculous by producing the concrete evidence in the form of sale instances of comparable land. It has been contended by the learned counsel on behalf of the Acquiring Body that the comparative sale instance is the main guide-line on the basis of which the court can determine the market value of the land. It has been contended by the learned counsel for the Acquiring Body that in the absence of any evidence to show the market value of the land, it is not possible to reject the valuation given by the SLAO and grant the enhancement of the valuation as contended by the claimant no. 1 and claimant no. 2. The learned counsel has further contended that the reliance placed on a letter from the Income-tax Authorities and the details of the sale instance therein cannot be accepted because the said letter has not been proved in the evidence because at the time of tendering the said documents the learned Judge has made it clear that contents of the said letter are not proved. The learned counsel has further contended that the claimant no. 1 is not able to produce the necessary details and evidence to show that the contents of the said letter are correct and proved. In the light of the

aforesaid fact it has been contended that the said letter obtained from the Income-Tax Authorities cannot be treated as proved and, therefore, the same is required to be ignored. He has drawn my attention to the ruling given by Vajifdar J on 24.8.2004 while recording the evidence in which it has been held as under :-

> "(It has been agreed between the parties that the valuation report which is an enclosure thereto is taken on record only to indicate that the same was forwarded to the S.L.A.O. and not in proof either of the execution thereof or in proof of the correctness of the contents thereof. Mr. Simhan has made a statement that he proposes examining the valuer. The documents have been marked in evidence subject to this clarification.)".

The learned counsel has therefore contended that in the absence of the said document as proved document, there is no material to establish that the market value of the land offered by the Collector is ridiculous and it is not possible to proceed on the basis of only oral submissions of the claimant no. 1 and 2 in so far as the said enhancement of compensation is concerned. On the other hand, the learned counsel for the claimant no. 1 and 2 both

have contended that the Court must take into consideration the valuation report prepared by the valuer in which also he has relied upon the aforesaid letter of Income Tax Authorities and the very sale instances as referred in the said letter.

26. It has been further contended by the learned counsel for the acquiring body that there is there is no material to show that the sales instances are proved or not before this Court. It has been contended that in the absence of proved sale instances it is not possible to accept the valuation report and award the higher compensation as claimed by the valuer in his report. It has also been contended that the Acquiring Body and/or the SLAO and the State Government have also not produced any evidence either in the form of sale instances or index II and, therefore, the Court must proceed on the basis of evidence which is on record i.e. the valuation report and, therefore, award the compensation as assessed by the valuer in his report in respect of the said land.

27. Thus, the question before me is whether I should accept the valuation report as it is and rant the higher compensation of any sale instances not being on record. In so far as evidence before me is concerned only valuation report is produced claiming higher compensation. Even this valuation report is

based on the very same sale instances by relying upon the very same letter of Income Tax Authorities. I am of the opinion that it is not possible to accept the said valuation report for enhancement of claim because it relies upon the very same letter of Income Tax Authority which is not proved before me in evidence. Thus, the valuation report has no other material on the basis of which he has arrived at the said valuation save and except the aforesaid two sale instances. The valuation report without taking into consideration the said two sale instances is baseless and without any substance. Apart therefrom, in the cross-examination of the valuer, the valuer has in terms given various details which indicates that the valuation report is unreliable and cannot be accepted as a conclusive piece of evidence. In the cross-examination he has stated as under :-

> "It is true that I did not give weightage to the fact that the land was mortgaged for the purpose of preparation of my valuation report."

He has further deposed as under :-

> "That he has taken into consideration the rate as per the buildable area of the land and potentiality of the market value of the

land if it is developed or developable and sold in the open market."

"However, in the present case, in view of the fact that the claim of BPT was not appearing in any of the records, I did not take into account the said factors."

(The said factors refer to the BPT permission for ultimate transfer of the land.).

In view of the aforesaid position, it is clear that the valuation report prepared by the valuer is unreliable piece of evidence firstly because it inherently lacks in material particulars and fails to take into consideration the necessary factors for arriving at the market value of the land. Secondly it is solely based on the two sale instances which are not even produced nor established in the course of evidence. It is now well settled that if the claimant fails to establish the ingredients of the market value of the land which is essentially to be proved on the basis of the sale instances in that case the Court must accept the market value as awarded by the SLAO. It is no doubt true the SLAO or the Acquiring Body has not stepped into the witness box to prove any instances. However, in my view, merely on the said ground it is not appropriate to grant the valuation as claimed by the

valuer in his valuation report in favour of the claimant no. 1 and 2. I, therefore, hold that the SLAO has awarded the proper market value of the land and the same should be granted and no further enhancement is called for.

28. This now leads me to the second and third aspects of the valuation report. In so far as the valuation of the buildings is concerned, there are two factors which are to be taken into consideration. The valuer has in his report claimed the valuation of 22 structures i.e. 19 temporary and three permanent RCC structures. It is an admitted position before me that the said 19 structures have been dismantled and have been taken away by the claimant no. 1. However, the learned counsel for the claimant no. 1 has contended that the said structures were dismantled and taken away after the award was passed and, therefore, they were entitled for value of the same since on the date of the award the said structures were not yet removed. The SLAO has in the award awarded the compensation for only three RCC structures and not in respect of the temporary structures removed by the claimant no. 1. However, he has stated in his award that the said structures are to be removed by the claimant no. 1. In my opinion, it is not possible to grant a compensation for the structures which are removed by the claimant no. 1 and are not forming part of

the acquisition. However, the learned counsel for the claimant no. 1 insisted that I must also grant compensation for the aforesaid structures because the structures were existing as on the date of the passing of the award. I am unable to subscribe to the aforesaid contention and accordingly I reject the same. I hold that only three RCC structures are entitled to compensation and not other 19 structures which were removed by the claimant no. 1. However, in so far as the three RCC structures are concerned, the SLAO has awarded a small amount of Rs. 3,99,000/- whereas the valuer has given valuation of the said construction cost and has held that the amount of the RCC structure required to be awarded is much higher at Rs. 23,07,676.00. In the aforesaid valuation report, the valuer has arrived at the figure on the basis of a depreciated cost whereas the SLAO in his award has awarded compensation as a lumpsum figure without taking into consideration any principle whatsoever. I therefore, award in so far as the aforesaid three RCC structures are concerned, the aforesaid amount as per the valuation report since he has taken into consideration the same on the basis of the depreciated value of the case. However, in so far as the other 19 structures are concerned, which are removed by the claimant no. 1, I hold that the award passed by the SLAO is correct and do not grant any enhancement of compensation. It is simply

because no compensation can be paid in respect of the property which is not acquired by the State Government.

29. This leads me to the next valuation aspect pertaining to the valuation of the plant and machinery. As stated above, the relevant instances which were accepted as documents before my predecessor Judge who was hearing the present proceedings and before whom the said valuation report was filed. However, when it was noticed that the valuation report did not contain the details of the plant and machinery on enquiry having been made it was found that the said pages were missing. I had accordingly directed the SLAO to verify the valuation report where the valuation report was filed and the SLAO has accordingly produced the missing pages. The said pages are accordingly allowed to be inserted in the said exhibit with the consent of all the parties and I have permitted further cross-examination by the Acquiring Body of the said valuation in so far as the valuation of the plant and machinery is concerned. The said evidence was adduced on 11.4.2005 before me. It is a short one page evidence. It is clear that the valuer has based his evidence by contending that he has taken into consideration purchase value of the said plant and machinery. He has admitted in his evidence as under :-

> "I have not shown the replacement value of the machinery in my report which I have relied upon in page 36 para 2 of the valuation report. It is true that the valuation of Rs. 47,64,400/- mentioned by me in Annexure D-4 at Pg. 36 of my valuation report is based on replacement cost of the plant and machinery."

He has also stated in his evidence that he is not able to produce any such replacement cost value of the said plant and machinery. Thus, it is clear that the report which has been prepared by him in so far as the plant and machinery is concerned, furnishes no details, and, therefore, the said valuation report based on no material cannot be accepted even in respect of the plant and machinery and, I therefore, do not grant any enhancement in respect thereof.

25. Thus, I hold as under :-

(1) That in so far as the apportionment of the claim in respect of the leasehold land is concerned, the same has to be at the ratio of 70% to the lessee i.e. claimant no. 1 and 30 % to the lessors i.e. claimant no. 2 i.e. Bombay Port Trust and/or State Government.

(2) In so far as the four plots of land having a total area of 2851.46 square metres is concerned, the claimant no. 1 has proved that he is the owner of the said property and thus entitled to get amount of compensation in respect thereof and the claimant no. 2 and/or the State Government is not entitled to any compensation for the said portion of the land.

(3) In so far as the valuation of the land is concerned, I reject the valuation report and uphold the award passed by the SLAO. However, I grant enhancement of the compensation in respect of the three RCC structures. I give all the said three RCC structures an enhancement. In so far as the 19 structures are concerned which are removed by the claimant no. 1, the claimant no. 1 is not entitled to any compensation whatsoever. In so far as the plant and machinery is concerned, Claimant No. 1 i.e. Scindia Workshop Ltd., has already removed the

same and is not entitled to any compensation in respect thereof.

(4) I thus hold that as aforesaid the claimant no. 1 will be entitled to the payment of enhanced Market Value in respect of the three R.C.C. Structures and statutory benefits namely solatium at the rate of 30% under section 23 (2) of the Land Acquisition Act and also compensation under Section 23 (1A) of the Act. The said reference is answered accordingly. The SLAO is directed to make the aforesaid payment of the enhanced compensation on three RCC structures to the claimant no. 1 within a period of six weeks from today with interest at the rate of 9% for the first year and 15% for the subsequent years under Section 28 of the Land Acquisition Act. I also direct the Office to permit the claimant no. 1 i.e. Scindia Workshop Ltd., Claimant No. 2 i.e. Bombay Port Trust and the Collector, Bombay to withdraw the amount deposited by the SLAO in this Court in accordance with the findings above. As far as the Lessor’s share of the Compensation is concerned, the matter of apportionment of the same between the Bombay Port Trust and the Collector is settled between the said two parties and is based on the statement of claim of the Collector dated 17th July, 2004. In so far as the value of the structures and the freehold land of 2851.46 square meters is concerned, the claimant

no. 1 will be solely entitled to the same as the claimant no. 2 and the State Government have no interest whatsoever in respect of the same.

(5) The figures are computed on the basis of the consent of the parties for the purpose of arithmetical calculations only.

(6) The agreed work-sheet statement by the parties is tendered before me which is based on my aforesaid findings. The same is annexed as Annexure-I to this judgment. In accordance with the said work-sheet statement I pass the order as under :-

1. Out of the amount lying in the Hon’ble High Court :

a) Claimant No. 1 i.e. Scindia Workshop Ltd., is entitled to withdraw Rs.55,61,686.46 (Rupees Fifty Five lakhs, Sixty one thousand, Six hundred Eighty six and Forty six paise only).

b) Claimant No. 2 i.e. Board of Trustees of the Port of Mumbai is entitled to withdraw Rs. 46,83,247.10 (Rupees Forty six lakhs, Eighty three thousand, Two hundred Forty

seven and Ten paise only.)

c) Collector of Mumbai is entitled to withdraw Rs. 32,67,936.44 (Rupees Thirty two lakhs, Sixty seven thousand, Nine hundred Thirty six and Forty four paise only.).

2. In the event of any interest accruing after 24th June 2005 on the amount invested by the Prothonotary, the interest to be apportioned in the same proportion between Claimant No. 1, Claimant No. 2 and the Collector of Mumbai.

3. Prothonotary to act on the copy of the order authenticated by the Private Secretary of this Court.

4. Special Land Acquisition Officer is directed to pay to the Claimant No. 1 a sum of Rs. 1,56,29,856.34 (Rupees One crore Fifty Six lakhs, Twenty nine thousand, Eight hundred Fifty six and Thirty four paise only.). Together with further interest at the rate of 15% p.a. from 20th July 2005 till date of payment and/or realization of Rs. 63,34,928.08 (Rupees Sixty three lakhs, Thirty four thousand, Nine hundred Twenty eight and eight paise only).

26. The Land Acquisition Reference is answered accordingly. However, there shall be no order as to costs.